

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tyler Walls	Team: Squad #4	CCRB Case #: 202102742	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 10/26/2019 3:36 AM	Location of Incident: § 87(2)(b)	Precinct: 28	18 Mo. SOL 4/26/2021	EO SOL 12/11/2021	
Date/Time CV Reported Wed, 05/05/2021 4:39 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 05/05/2021 4:39 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Germaine Hall	16379	957653	028 PCT
2. PO Jeffrey Martin	11623	960880	028 PCT
3. POM Daniel Azzolino	20057	959465	028 PCT
4. SGT John Pan	00112	942322	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO SUTHOM UNGCHAROEN	26224	946349	028 PCT
2. PO DOMINIC BRACCO	26634	966968	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A. PO Jeffrey Martin	Discourtesy: Police Officer Jeffrey Martin spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B. PO Jeffrey Martin	Force: Police Officer Jeffrey Martin used a non-lethal restraining device on § 87(2)(b)	§ 87(2)(b)
C. PO Jeffrey Martin	Force: Police Officer Jeffrey Martin used pepper spray against § 87(2)(b)	§ 87(2)(b)
D. POM Daniel Azzolino	Force: Police Officer Daniel Azzolino used physical force against § 87(2)(b)	§ 87(2)(b)
E. SGT John Pan	Force: Sergeant John Pan used physical force against § 87(2)(b)	§ 87(2)(b)
F. PO Jeffrey Martin	Force: Police Officer Jeffrey Martin used physical force against § 87(2)(b)	§ 87(2)(b)
G. POM Germaine Hall	Abuse: Police Officer Germaine Hall seized § 87(2)(b)'s property.	§ 87(2)(b)

Case Summary

On May 5, 2021, § 87(2)(b) filed this complaint via the CCRB's call processing system.

On October 26, 2019, at approximately 3:36 a.m., § 87(2)(b) went to pick up his vehicle parked in front of § 87(2)(b), in Manhattan. PO Jeffrey Martin and PO Daniel Azzolino, both from the 28th Precinct, approached § 87(2)(b) who was inside of his vehicle. Sgt. John Pan, PO Germaine Hall, and PO Suthom Ungcharoen, all from the 28th Precinct, arrived later as backup. PO Martin told § 87(2)(b) to "get the fuck out of the car," but § 87(2)(b) refused (**Allegation A: Discourtesy**; § 87(2)(g) PO Martin used his taser on § 87(2)(b) to no effect (**Allegation B: Force**; § 87(2)(g) PO Martin then pepper sprayed § 87(2)(b) (**Allegation C: Force**; § 87(2)(g) PO Martin, PO Azzolino, and Sgt. Pan all pulled § 87(2)(b) out of the vehicle (**Allegations D – F: Force**; § 87(2)(g) The officers took § 87(2)(b) to the hospital to receive treatment for his injuries. During this time, § 87(2)(b) vehicle was brought to the 28th Precinct stationhouse where it was vouchered (**Allegation G: Abuse of Authority**; § 87(2)(g) The officers later brought § 87(2)(b) to the 28th Precinct stationhouse where they charged him with driving while intoxicated and obstruction of government administration (OGA).

An IAB spin-off was generated regarding § 87(2)(b) complaint that he never received his vehicle after the incident.

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Jeffrey Martin spoke discourteously to § 87(2)(b).

BWCs of the incident confirmed that a large crowd surrounded the officers as PO Martin attempted to get § 87(2)(b) out of the vehicle to arrest him. At various points, members of the crowd get within a few feet and even a few inches of § 87(2)(b) and the officers. At the 01:44 mark of PO Martin's BWC, PO Martin tells § 87(2)(b) to "get the fuck out of the car." PO Martin takes out his taser, points it at § 87(2)(b) and repeats "get the fuck out of the car" (BR 04 – BR 13).

§ 87(2)(b) testified that on October 26, 2021, at approximately 3:36 a.m., he went to pick up his vehicle from in front of the § 87(2)(b) at § 87(2)(b), in Manhattan. § 87(2)(b) had 4-5 shots of Henessy earlier in the day. § 87(2)(b) waited inside of his vehicle for his friend to get back and drive him away since he had a few drinks. While sitting inside of his vehicle, PO Martin and PO Azzolino approached § 87(2)(b) vehicle and knocked on his driver's side window. § 87(2)(b) opened his driver's side door, but PO Martin closed it shut. § 87(2)(b) placed his hands on the steering wheel and turned on the lights to his vehicle. PO Martin opened § 87(2)(b) door. PO Martin told § 87(2)(b) that he could smell alcohol on his breath and asked for his license and registration. § 87(2)(b) refused to provide his documents because he wanted to know what was happening first. PO Martin asked § 87(2)(b) for his documents two more times, but § 87(2)(b) did not provide them. PO Martin told § 87(2)(b) to step outside of the vehicle, but he did not comply. § 87(2)(b) could not recall how many times PO Martin asked him to step outside of his vehicle. Approximately three to five bystanders stood on the sidewalk while he interacted with the officers. A female bystander approached § 87(2)(b) and asked him what he did to cause the interaction. § 87(2)(b) replied that he did not know. The officers asked her to back up, which she did. In his interview, § 87(2)(b) did not mention anything about an officer using profanity (BR 01).

PO Martin testified that on the day of the incident, he received a radio message for a vehicle accident at § 87(2)(b) and § 87(2)(b), in Manhattan. PO Martin responded to the location and observed two vehicles pressed up against each other, bumper to bumper, in front of the location. PO Martin and PO Azzolino approached the front vehicle which belonged to a taxi driver.

The taxi driver explained that he was double parked in the area when the vehicle behind him crashed into him. PO Martin asked the taxi driver to move his vehicle up so that he could inspect the damage. The taxi driver obliged, but § 87(2)(b) hit the taxi driver again as his vehicle was still on drive. PO Martin approached the driver's side of § 87(2)(b) vehicle and asked him to put his vehicle on park. PO Martin repeated his request, but § 87(2)(b) did not respond. PO Martin opened § 87(2)(b) door, which was unlocked, and placed the vehicle on park himself. PO Martin told § 87(2)(b) to step out of the vehicle. § 87(2)(b) did not respond. PO Martin asked several more times for § 87(2)(b) to step out of the vehicle, but he did not. Approximately 50 bystanders encircled the officers. The closest individual in the crowd stood approximately five feet from the officers while the average distance of a person in the crowd was approximately 5 – 10 feet. Several people in the crowd told § 87(2)(b) to get out of the vehicle. A female individual in the crowd approached § 87(2)(b) and started speaking with him briefly. PO Martin did not know what the two of them said. The individuals in the crowd did not do anything else. At some point during this time PO Martin told § 87(2)(b) to “get the fuck out of the car.” PO Martin stated that he used profanity because a crowd was forming and thus considered the situation to be stressful. PO Martin did not know if there were circumstances in which an officer's use of profanity could be permissible but stated that he felt he could only “repeat [himself] so many times” (BR 02).

PO Hall testified that he responded to the location because he received a call for additional units. When he arrived, § 87(2)(b) and PO Martin were already interacting with each other while a crowd surrounded them on the street. PO Hall attempted to control the crowd by asking them to back up, which they did. As PO Hall was engaged with controlling crowd at the time, he could not see or hear any portion of the interaction between § 87(2)(b) and PO Martin (BR 03).

An officer is required to interact with members of the public in a professional and courteous manner. NYPD Patrol Guide Procedure 203-09 (BR 14).

Profanity has been found to be permissible where the officer has resorted to such language in the heat of a highly stressful situation. DCT Case 2013-10143 (BR 15).

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
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§ 87(2)(b)

§ 87(2)(b).

Allegation (B) Force: Police Officer Jeffrey Martin used a non-lethal restraining device on

§ 87(2)(b) stated that after he refused several times to leave his vehicle, PO Martin informed him that if he did not exit the vehicle, he would be either maced or tased; § 87(2)(b) could not recall which one the officer said at the time but knew that it was one of the two. PO Martin threatened to either mace or tase § 87(2)(b) approximately five minutes into the interaction. PO Martin pulled out the corresponding item in conjunction with his threat. PO Martin informed § 87(2)(b) that he observed him with his keys in the ignition. § 87(2)(b) denied having his keys in the ignition. Two other officers arrived some time later. Approximately two to three officers attempted to grab § 87(2)(b) by his arm and neck to pull him out of the vehicle, but he held on to the steering wheel to prevent them from taking him out. The officers pepper sprayed § 87(2)(b) in the eye causing temporary blindness and burning. A couple of milliseconds later the

officers tased § 87(2)(b) in his upper right arm. § 87(2)(b) felt a shocking sensation on his body for a couple of seconds. As previously noted, § 87(2)(b) admitted that he drunk 4-5 shots of Hennessy earlier in the day.

PO Martin testified that he put his hand on § 87(2)(b) arm to prompt him to move. § 87(2)(b) pulled his arm back and made a fist as if he were about to hit him. PO Azzolino touched § 87(2)(b) arm at which point he made a fist again. PO Martin took out his taser and informed § 87(2)(b) that if he did not get out of the vehicle, he would be tased. PO Martin pulled out his taser because it appeared that § 87(2)(b) wanted to fight him. § 87(2)(b) did not react to PO Martin's remark about the taser. PO Martin called for additional units to assist him with the arrest. Six officers, including PO Hall, Sgt. Pan, and PO Zubi, responded to the location. PO Martin held several safety concerns during this incident: he did not know § 87(2)(b) he feared that § 87(2)(b) might drive away, and he feared that § 87(2)(b) could potentially have been inebriated. PO Martin believed that § 87(2)(b) could have been inebriated based on the way he refused the officers and did not comply. PO Martin tased § 87(2)(b) a minute or two after pulling out his taser and about three minutes into the confrontation. PO Martin tased § 87(2)(b) from 5 – 6 feet away. PO Martin did not know where the prongs of the taser made contact but knew that it hit center mass. The taser did not appear to effect § 87(2)(b) as he had no reaction. In his interview, PO Martin stated that taser usage is limited by the same protocol as the use of force.

As previously noted, PO Hall was engaged with controlling the civilians in the crowd and thus did not see or hear any portion of the interaction between § 87(2)(b) and PO Martin during this time.

PO Martin's BWC shows that PO Martin told § 87(2)(b) to exit the vehicle multiple times, but he did not comply. PO Martin and PO Azzolino attempt to grab § 87(2)(b) but he pulls away from the officers and holds on to the steering wheel. At the 02:01 mark of the BWC, PO Martin warns § 87(2)(b) "I'm telling you right now you're going to get tased?" § 87(2)(b) still refuses to leave the vehicle. At the 02:45 mark of the BWC, PO Martin warns again, "Get the fuck out of the car right now. I'm not asking again." § 87(2)(b) does not comply. Shortly after, PO Martin tases § 87(2)(b). The taser appears to have some effect on § 87(2)(b) but he still does not exit the vehicle. None of the BWCs capture § 87(2)(b) making a fist towards either PO Martin or PO Azzolino.

Officers will use only the reasonable force necessary to gain control or custody of a subject. NYPD Patrol Guide Procedure 221-01 (BR 16).

The same factors listed in Procedure 221-01 determines the propriety of using Conducted Electrical Weapons (CEW) (BR 16). A CEW should only be used against persons who are actively resisting. CEWs should generally not be used against subjects operating vehicles. Officers must also consider if the subject is apparently under the influence of a stimulant/narcotic that would affect pain tolerance. When feasible, officers should issue a verbal warning. NYPD Patrol Guide Procedure 221-08 (BR 17).

§ 87(2)(b), § 87(2)(g)

Allegation (C) Force: Police Officer Jeffrey Martin used pepper spray against § 87(2)(b)

As previously noted, § 87(2)(b) testified that after PO Martin warned him that he would be either tased or pepper sprayed, officers pepper sprayed him and then tased him within a few milliseconds.

PO Martin stated that after tasing § 87(2)(b) he asked him 20 more times to exit the vehicle. § 87(2)(b) refused to comply. A minute after tasing § 87(2)(b) PO Martin pepper sprayed him. PO Martin stated that for an officer to use pepper spray, the individual would need to be actively resisting. PO Martin considered § 87(2)(b) pulling his arm away and making a fist a sign of active resistance.

As previously noted, PO Hall did not observe or hear any portion of the interaction between PO Martin and § 87(2)(b) during this time as he was tending to the crowd.

Several of the BWCs confirmed that after PO Martin tased § 87(2)(b) he still refused to exit the vehicle. PO Martin asked § 87(2)(b) to exit the vehicle several more times, but he did not comply. Several officers attempt to grab § 87(2)(b) but he tells them to let go. At the 03:31 mark of PO Martin's BWC, PO Martin pepper sprays § 87(2)(b) while he is still inside of the vehicle, approximately 39 seconds after he first tased him. § 87(2)(b) reaction to the pepper spray cannot be seen in any of the BWCs.

Pepper spray can be used to gain or maintain control of a person who is actively resisting arrest or lawful custody or actively exhibiting active aggression. Officers must avoid using pepper spray in small, contained areas such as automobiles NYPD Patrol Guide Procedure 221-07 (BR 18).

Allegation (D) Force: Police Officer Daniel Azzolino used physical force against § 87(2)(b)

Allegation (E) Force: Sergeant John Pan used physical force against § 87(2)(b)

Allegation (F) Force: Police Officer Jeffrey Martin used physical force against § 87(2)(b)

§ 87(2)(b) stated that after he was tased and pepper sprayed, two or three officers grabbed him by his neck, pulled him out of the vehicle, and laid him on the ground by his shoulder. § 87(2)(b) did not know which officers pulled him out and placed him on the ground as he could not see due to the pepper spray. The officers placed him in handcuffs while he was on the ground.

PO Martin stated that after he pepper sprayed § 87(2)(b) PO Azzolino, and Sgt. Pan grabbed § 87(2)(b) while he stood behind them. As they pulled § 87(2)(b) out of the vehicle, PO Azzolino, Sgt. Pan, and PO Martin all fell to the ground and sustained injuries. PO Martin twisted his ankle as he fell. PO Martin did not know the extent of PO Azzolino and Sgt. Pan's injuries. The

officers placed § 87(2)(b) in handcuffs while he was on the ground.

PO Hall stated that after he finished tending to the crowd, he observed that the other officers were in the process of trying to take § 87(2)(b) out. PO Hall approached the vehicle to assist. He, PO Martin, PO Azzolino, and Sgt. Pan all grabbed § 87(2)(b) by his hands to get him out of the vehicle. § 87(2)(b) resisted the officers in some way, but PO Hall could not recall what he did in particular. PO Martin, PO Azzolino, and Sgt. Pan all sustained injuries because of § 87(2)(b) resistance.

TRI # § 87(2)(b) revealed that Sgt. Pan suffered contusions due to resistance from § 87(2)(b) (BR 19). TRI # § 87(2)(b) and TRI # § 87(2)(b) showed that PO Azzolino and PO Martin suffered sprains/strains while attempting to arrest § 87(2)(b) (BR 20 and 21).

The BWCs showed that PO Martin, PO Azzolino, and Sgt. Pan all pulled § 87(2)(b) out of the vehicle. There is no further force used while taking him out at that time.

Officers will use only the reasonable force necessary to gain control or custody of a subject. NYPD Patrol Guide Procedure 221-01 (BR 16).

§ 87(2)(b), § 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Germaine Hall seized § 87(2)(b)'s property.

§ 87(2)(b) testified that once he was in handcuffs, the officers brought him to § 87(2)(b) Hospital to treat his injuries. The officers later brought § 87(2)(b) to the 28th Precinct stationhouse where he was charged with driving while intoxicated and resisting arrest. § 87(2)(b) never received his vehicle since the incident. Officers informed § 87(2)(b) that he would need to complete an assessment test before his vehicle could be retrieved from the stationhouse.

PO Martin stated that once § 87(2)(b) was brought to the hospital for his injuries, he had no further interaction with him. PO Hall was the officer who vouchered § 87(2)(b) property at the stationhouse.

PO Hall testified that after the officers took § 87(2)(b) to the hospital, he went back to the 28th Precinct stationhouse to start the arrest process. At around 7:00 a.m. that day, § 87(2)(b) was brought to the stationhouse where his fingerprints and photographs were taken. A separate unit also performed an alcohol test on § 87(2)(b). As the arresting officer for § 87(2)(b) PO Hall oversaw the vouchering of § 87(2)(b) property. For § 87(2)(b) to retrieve his property, § 87(2)(b) would need to go to the District Attorney's Office first to get release forms. Once he obtained the release forms, he could present the documents to officers at the 28th Precinct stationhouse and retrieve his property. During his interview, PO Hall reviewed the property voucher for § 87(2)(b) vehicle. PO Hall stated that he did not know why the voucher indicated that the vehicle was released to § 87(2)(b) when he did not receive it and did not know what assessment test § 87(2)(b) was talking about. PO Hall did not recall ever having a conversation with § 87(2)(b) regarding his property and did not hear him complain about his property. The person who would release § 87(2)(b) property would be one of the assigned officers inside of the

stationhouse at the time when § 87(2)(b) returned. PO Hall did not hear anything about § 87(2)(b) returning to the stationhouse.

Property voucher #§ 87(2)(b) listed § 87(2)(b) vehicle along with his other property as invoiced on the day of the incident. The voucher lists § 87(2)(b) vehicle along with his other property as being returned on October 31, 2019 (BR 22).

Officers must voucher a civilian's property subject to an arrest. NYPD Patrol Guide Procedure 218-01 (BR 26).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 23).
- PO Martin has been a member-of-service for five years and this is the first CCRB complaint to which he has been a subject.
- PO Hall has been a member of service for six years and has been a subject in two CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of November 26, 2021, the NYC Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (BR 24).

§ 87(2)(b)

Squad: 4

Investigator:	<u>Tyler Walls</u>	<u>Inv. Tyler Walls</u>	<u>11/30/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Raquel Velasquez</u>	<u>IM Raquel Velasquez</u>	<u>12/01/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date

